



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

290 BROADWAY

NEW YORK, NY 10007-1866

NOV 24 2014

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7005 3110 0000 5964 2719

Mr. Jacob S. Tawil, P.E., Commissioner
Department of Public Works
City of Middletown
16 James Street
Middletown, New York 10940-1587

Re: Third Amended Administrative Order CWA-02-2015-3019
City of Middletown
SPDES Permit No. NY0026328

Dear Commissioner Tawil:

Please find enclosed a Third Amended Administrative Order ("Third Amended Order") which the United States Environmental Protection Agency ("EPA") Region 2 is issuing to the City of Middletown ("Middletown") pursuant to Section 309 of the Clean Water Act ("CWA"), 33 U.S.C. §1319. This Third Amended Order amends EPA Administrative Order CWA-02-2013-3058 ("2013 Order"), Amended Administrative Order CWA-02-2014-3049 ("2014 Amended Order"), and Second Amended Administrative Order CWA-02-2014-3056, issued to Middletown on September 26, 2013, July 1, 2014, and August 14, 2014, respectively. The Orders incorporate a compliance schedule requiring Middletown to develop and submit an Industrial Pretreatment Program ("IPP") to EPA for approval. This Third Amended Order extends the last two deadlines in the compliance schedule to allow additional time for thorough review of the submission and response. The newly proposed schedule was agreed upon by EPA and the City of Middletown.

Enclosed are two originals of the Third Amended Order. Please acknowledge receipt on one of the originals and return it by mail in the enclosed envelope. Failure to comply with the Third Amended Order may subject Middletown to civil or criminal penalties pursuant to Section 309 of the CWA, 33 U.S.C. §1319.

If you have any questions regarding the enclosed Amended Order, please contact Douglas McKenna, Chief, Water Compliance Branch, at (212) 637-4244.

Sincerely,

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

cc: Joseph DiMura, NYSDEC (w/enclosure)

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
Region 2
290 Broadway
New York, New York 10007-1866

-----X
IN THE MATTER OF
:
:
City of Middletown :
Department of Public Works :
16 James Street :
Middletown, New York 10940-1587 :
:
SPDES Permit No. NY0026328 :
:
Proceeding pursuant to §309(a) of the :
Clean Water Act, 33 U.S.C. §1319(a) :
:
-----X

THIRD AMENDED
ADMINISTRATIVE ORDER
CWA-02-2015-3019

This Third Amended Administrative Order amends the Order CWA-02-2013-3058 ("2013 Order") as well as the Amended Administrative Order ("2014 Amended Order"), and the Second Amended Administrative Order ("Second Amended Order"). Attachments 1, 2 and 3.

STATUTORY AUTHORITY

1. This Third Amended Administrative Order is made pursuant to Section 309(a) of the Clean Water Act ("CWA"), 33 U.S.C. §1319(a). This authority has been delegated by the Administrator of the United States Environmental Protection Agency ("EPA") to the Regional Administrator, EPA Region 2 and further delegated to the Director of the Division of Enforcement and Compliance Assistance, EPA Region 2.
2. Section 309(a) of the CWA, 33 U.S.C. §1319(a), authorizes the Administrator to issue an order requiring compliance or commence a civil action when any person is found to be in violation of Section 301 of the CWA, 33 U.S.C. §1311, or in violation of any permit condition or limitation in a permit issued under Section 402 of the CWA, 33 U.S.C. §1342.

FINDINGS

The following Findings are added to the Findings in the Second Amended Order, which incorporates by reference the Findings of Violation in the 2013 Order and the Findings in the 2014 Amended Order:

1. Paragraph 18 is added as follows:

“On October 8, 2014, EPA, by email, provided the City of Middletown (“Middletown” or “Respondent”) feedback on its July 25, 2014 submissions.”

2. Paragraph 19 is added as follows:

“By phone call on October 23, 2014, Middletown counsel informed EPA counsel that Middletown is meeting on October 28, 2014 with its contractor to review EPA’s feedback to its July 25, 2014 submissions. Middletown requested a 30-day extension of time for each remaining submittal requirement provided in the Second Amended Order. Specifically, Middletown proposed to move the October 31, 2014 submittal deadline of an Industrial Pretreatment Program to Middletown’s municipal legislative body for approval to November 30, 2014. Middletown also proposed to move the December 31, 2014 submittal deadline of a complete Industrial Pretreatment Program for EPA approval to January 30, 2014.”

3. Paragraph 20 is added as follows:

“Middletown requested a conference call to discuss EPA’s October 8, 2014 email. By phone on October 30, 2014, EPA and Middletown discussed EPA’s edits. Middletown requested feedback on its proposed local limits. Given further discussion was required by EPA to answer Middletown’s question, EPA informed Middletown that it will provide feedback after EPA has had a chance to discuss and would also provide an answer to Middletown’s 30-day extension of time.”

4. Paragraph 21 is added as follows:

“By email dated November 7, 2014, EPA agreed to Middletown’s 30-day extension request. EPA also indicated that it would provide Middletown feedback regarding its local limit question within the following week.”

SECTION 309(a)(3) COMPLIANCE ORDER

1. Paragraph 2.F. of the Section 309(a)(3) ORDERED PROVISIONS Section of the 2013 Order shall be replaced with the following:

“By **December 1, 2014**, the City of Middletown shall submit an Industrial Pretreatment Program submission to its municipal legislative body for approval.”

2. Paragraph 2.G. of the Section 309(a)(3) ORDERED PROVISIONS Section of the 2013 Order shall be replaced with the following:

“By **January 30, 2015**, the City of Middletown shall submit to EPA a complete Industrial Pretreatment Program submission for approval.”

GENERAL PROVISIONS

1. Any documents to be submitted by Respondent as part of this Order shall be sent by certified mail or its equivalent and shall be signed by an authorized representative of the respective entity (see 40 C.F.R. §122.22), and shall include the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."


2. The Respondent shall have the opportunity, for a period of twenty (20) days from the date of receipt of this Order, to confer, regarding the Ordered Provisions, with the following designated Agency representative:

Douglas McKenna, Chief
Water Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway - 20th floor
New York, NY 10007-1866
(212) 637-4244

3. Respondent may seek federal judicial review of the CWA Section 309(a)(3) Compliance Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§701-706.
4. This Order does not constitute a waiver from compliance with, or a modification of, the effective terms and conditions of the CWA, its implementing regulations, or any applicable permit, which remain in full force and effect. This Order is an enforcement action taken by EPA to ensure swift compliance with the CWA. Issuance of this Order shall not be deemed an election by EPA to forego any civil or criminal actions for penalties, fines, imprisonment, or other appropriate relief under the CWA.
5. Notice is hereby given that failure to comply with the terms of the CWA Section 309(a)(3) Compliance Order may result in your liability for civil penalties for each violation of up to \$37,500 per day under Section 309(d) of the CWA, 33 U.S.C. §1319(d), as modified by 40 C.F.R. Part 19. Upon suit by EPA, the United States District Court may impose such penalties if, after notice and opportunity for a hearing, the Court determines that you have violated the CWA as described above and failed to comply with the terms of the Compliance Order. The District Court has the authority to impose separate civil penalties for any violations of the CWA and for any violations of the Compliance Order.
6. If any provision of this Order is held by a court of competent jurisdiction to be invalid, any surviving provisions shall remain in full force and effect.

7. This Order shall become effective upon the date of execution by the Director, Division of Enforcement and Compliance Assistance.

Dated: 11/24/14

Signed: 
Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance